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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,873	11/26/2003	Ihab M. Hekal	62357.016301	9349
7590	06/08/2004			EXAMINER
Greenberg Traurig, LLP 22nd Floor 885 Third Avenue New York, NY 10022			MCDOWELL, SUZANNE E	
			ART UNIT	PAPER NUMBER
			1732	

DATE MAILED: 06/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/723,873	HEKAL, IHAB M.	
	Examiner Suzanne E. McDowell	Art Unit 1732	
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>			
<b>Period for Reply</b>			
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM <b>THE MAILING DATE OF THIS COMMUNICATION.</b>			
<ul style="list-style-type: none"> <li>- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</li> <li>- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.</li> <li>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</li> <li>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).</li> </ul> <p>Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p>			
<b>Status</b>			
<p>1)<input type="checkbox"/> Responsive to communication(s) filed on _____.</p> <p>2a)<input type="checkbox"/> This action is <b>FINAL</b>.                    2b)<input checked="" type="checkbox"/> This action is non-final.</p> <p>3)<input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i>, 1935 C.D. 11, 453 O.G. 213.</p>			
<b>Disposition of Claims</b>			
<p>4)<input checked="" type="checkbox"/> Claim(s) <u>1-10</u> is/are pending in the application.</p> <p>4a) Of the above claim(s) _____ is/are withdrawn from consideration.</p> <p>5)<input type="checkbox"/> Claim(s) _____ is/are allowed.</p> <p>6)<input checked="" type="checkbox"/> Claim(s) <u>1-10</u> is/are rejected.</p> <p>7)<input type="checkbox"/> Claim(s) _____ is/are objected to.</p> <p>8)<input type="checkbox"/> Claim(s) _____ are subject to restriction and/or election requirement.</p>			
<b>Application Papers</b>			
<p>9)<input type="checkbox"/> The specification is objected to by the Examiner.</p> <p>10)<input checked="" type="checkbox"/> The drawing(s) filed on <u>26 November 2003</u> is/are: a)<input checked="" type="checkbox"/> accepted or b)<input type="checkbox"/> objected to by the Examiner.</p> <p>Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).</p> <p>Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).</p> <p>11)<input type="checkbox"/> The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.</p>			
<b>Priority under 35 U.S.C. § 119</b>			
<p>12)<input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</p> <p>a)<input type="checkbox"/> All    b)<input type="checkbox"/> Some * c)<input type="checkbox"/> None of:</p> <p>1.<input type="checkbox"/> Certified copies of the priority documents have been received.</p> <p>2.<input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.</p> <p>3.<input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</p>			
<p>* See the attached detailed Office action for a list of the certified copies not received.</p>			
<b>Attachment(s)</b>			
<p>1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____</p>		<p>4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date _____</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6) <input type="checkbox"/> Other: _____</p>	

**DETAILED ACTION*****Double Patenting***

1. Applicant is advised that should claim 2 be found allowable, claim 4 will be objected to and, should claim 3 be found allowable, claim 5 will be objected to, under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1 and 6-10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 5-10 of U.S. Patent No. 6,486,231. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims encompass the claims of 6,486,231. The examples in the specification of the instant application are the same as those in 6,486,231.

***Allowable Subject Matter***

4. The following is a statement of reasons for the indication of allowable subject matter:

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the prior art does not teach nor fairly suggest a composition which comprises at least two phases, one phase composed of a majority of component A, a semicrystalline or amorphous polymer, and the second phase is composed of a majority of component B, a polymer of a hydrophilic agent, and a majority of component C, a particle and wherein the two phases form co-continuous interconnecting channel morphology.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. McAllister et al. (US Patent 5,130,342); Hatsuda et al. (US Patent 5,518,761); Fischer et al. (US Patent 5,496,397); Evans et al. (US Patent 5,494,155); Lancesseur (US Patent 5,432,214); Farrell et al. (US Patent 4,425,410); Duddy (US Patent 3,375,208).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suzanne E. McDowell whose telephone number is (571) 272-1205. The examiner can normally be reached on M, W, Th 6:30-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Colaianni can be reached on (571) 272-1196. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SEM  
June 5, 2004

*Suzanne E. McDowell*  
Suzanne E. McDowell  
PRIMARY EXAMINER